



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2004

Ms. Joni Garcia
Executive Director
CASA of South Texas
P.O. Box 343
Pleasanton, Texas 78064

OR2004-5798

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205121.

CASA of South Texas ("CASA") received a request for seven categories of information, including lists of volunteers and board members, social economic information, quarterly reports, minutes of meetings and newsletters for CASA. You state that you have provided the requestor with some of the requested information. Further, you state that CASA has no information responsive to a portion of the request.¹ You claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted sample of information.³

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² We note you also raised sections 552.102, 552.103, 552.111, 552.117, and 552.135 of the Government Code as exceptions to disclosure of the requested information, but made no arguments in support of these exceptions. *See Gov't Code* § 552.301. Therefore, this ruling does not address whether any of the submitted information is excepted under sections 552.102, 552.103, 552.111, 552.117, or 552.135 of the Government Code.

³ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos.* 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses not only information protected by statute but also information made confidential by constitutional law or by judicial decision. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization’s list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization’s members or contributors may have a chilling effect on the organization’s contributors as well as on the organization’s own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). “[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.” *Id.*

Bay Area Citizens, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that “the burden must be light.” *Id.* at 376. Quoting the United State Supreme Court’s decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show “a reasonable probability that the compelled disclosure of a party’s contributors’ names will subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.* Such proof may include “specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.” *Id.*

Considering the representations made to this office, the supporting information submitted, and the totality of the circumstances, we find that you have made a *prima facie* showing that disclosure of the identities of contributors to CASA in this instance will burden First Amendment rights of freedom of association. We believe the term “contributor” encompasses both the identities of those individuals who make financial donations to CASA, and volunteers who donate their time and services to CASA. *Id.* Therefore, to the extent that the submitted information identifies volunteers of or contributors to CASA, it must be withheld under section 552.101 pursuant to the right of association, unless the volunteers or

contributors have waived their right of association. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

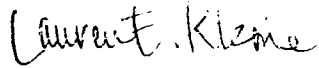
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Lauren E. Kleine".

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 205121

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.
2205 Avenue I, #117
Rosenberg, Texas 77471
(w/o enclosures)